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Information Report on Regulation of Handgun Sales in Portland

City Club of Portland (Portland, Or.)

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Information Report on
REGULATION OF HANDGUN SALES IN PORTLAND

In 1981, the City of Morton Grove, Illinois was the first city to adopt an ordinance banning private ownership of handguns. This prompted some other cities across the country, including Chiloquin, Oregon, to take action regarding gun control and regulation. This activity, coupled with a legislative hearing on April 8, 1984, prompted the Standing Committee on Law & Public Safety to examine the status of handgun regulation in Portland.

Oregon's firearm statutes, found in Chapter 166, Oregon Revised Statutes, date from 1925 and have not been significantly altered. They provide for the regulation of retail handgun dealers by licenses issued to dealers by cities and counties. These licenses prescribed by the Attorney General require the dealer to wait a period of 120 hours between sale and delivery of handguns. This delay is intended to provide an agitated purchaser with time to "cool down" before delivery and afford police an opportunity to determine, from the notice they receive of sale, whether the purchaser is barred from ownership by prior conviction.

According to the Portland City Attorney's office, this licensing requirement has not been uniformly observed by Oregon local government and has never been enforced in the City of Portland, even though the statute, ORS 166.440, provides that sales of handguns by dealers without licenses is a crime.

The problem is the ambiguity in ORS 166.430, wherein it provides, "Licensing authorities of any city, county, town or other municipality within this state may grant licenses in the form prescribed by the Attorney General...", rather than using the word "shall." The Attorney General has twice opined (on July 27, 1983, and August 23, 1966) that the licensing requirement is mandatory (i.e., that "may" means "shall"). The Office of Legislative Counsel advised on September 23, 1982 that, regardless of whether the requirement is mandatory or permissive, sales without a license violate the statute. The Portland City Attorney's Office, on the other hand, has insisted in two opinions (one addressed to former Commissioner Jordan on July 13, 1983, and the other addressed to Commissioner Lindberg on September 13, 1983) that licensing is permissive.

Though concerns about the ambiguity in the statute have been raised by a citizen group, Oregon Handgun Alert, since May, 1984, no action by the City Council has been taken. The group's concerns were reinforced in a June 2, 1984 Oregonian editorial which stated that "...unambiguous, timely answers are overdue from both the legislature and the Portland City Council."

House Bill 2338, assigned to the House Judiciary Committee, would have resolved the impasse by making the issuance of such licenses mandatory, but was tabled April 8, 1985, after a controversial hearing. No further action on this legislation is anticipated.

Two questions confront Portland's City Council: 1) whether Portland will have an enforceable waiting period between sale and delivery of handguns; and 2) whether the City's many retail dealers will continue to face uncertainty about the meaning of the existing law.

Respectfully submitted,

LAW & PUBLIC SAFETY STANDING COMMITTEE

Approved by the Research Board on April 25, 1985 and by the Board of Governors on May 6, 1985 for publication and distribution to the membership. Because this report carries no conclusions or recommendations, no official action is required of the membership.

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